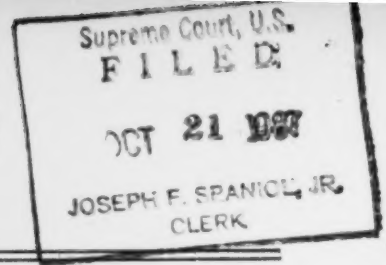


(2)
No. 86-2029



In The
Supreme Court of the United States
October Term, 1987

— o —
CLARKE DUNLAP,

Petitioner,

v.

UNIVERSITY OF KENTUCKY,

Respondent.

— o —
**RESPONSE TO PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT**

— o —
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DATE: OCTOBER 20, 1987

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**RESPONSE TO PETITION FOR A WRIT OF
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University of Kentucky, Respondent and Appellee below, hereby responds to the Petition addressed to this Court to issue a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit to review the Judgment in *Clarke Dunlap v. University of Kentucky* (6th Cir. No. 86-5685; March 18, 1987; Unpublished Opinion).

COUNTER-STATEMENT OF THE CASE

The statement of facts as presented by the Petitioner is misleading at best. First, it states that the Petitioner "remains confined to a wheelchair"; there is considerable doubt that he is so confined. It has not been established that there is a causal link between his claimed "paralytic neurological disorder" and the influenza inoculation he received at the University.

The evidence does not show that "he was at all times performing adequately" as a student. His resignation from the University's graduate program was not due to a "lack of support services" or "the treatment he received from the University of Kentucky"; in fact, Petitioner himself testified that his resignation was a legal stratagem designed to enhance his chances of success in litigation based upon alleged discrimination on the basis of handicap. (Dunlap deposition, January 17, 1985, App. 26a-30a)

Of even more importance are the facts omitted by the Petitioner. By his own admission Petitioner, subsequent to his resignation from Respondent's graduate program, proceeded to Arizona State University where he filed a handicap discrimination complaint against that University. (App. 10a) He then moved to Louisiana State University's graduate program where he filed yet another handicap claim against LSU. (App. 10a-12a) The various handicap discrimination claims were punctuated with personal injury actions of one kind or another (App. 4a-7a), to say nothing of his "libel and slander" suit against the Salvation Army. (App. 3a)

REASONS FOR DENYING THE WRIT

I. IF THE COURT WOULD OVERRULE ITS DECISION IN ATASCADERO STATE HOSPITAL v. SCANLON IT SHOULD DO SO IN A MERITORIOUS CAUSE.

The instant case is a classic demonstration of the continued need for sovereign immunity. As the Petitioner notes, at page 5 of his Petition herein, this case began with a pro se Complaint in February of 1982. The respondent University filed a timely motion to dismiss. There followed a series of extensions of time in the District Court to enable Petitioner to secure counsel. Over a year later the Petitioner was permitted to amend his Complaint to add new defendants and a new cause of action. By this time the Petitioner had entered the graduate program at Arizona State University where he proceeded to file handicap and age claims against that University. (App. 1a and 10a)

Following a relatively lengthy period of discovery and other postponements, the case was assigned for trial beginning on October 7, 1985. In the meantime the Petitioner moved for recusal of the trial judge (Reed) because Judge Reed had dismissed two other suits filed by this Petitioner against this Respondent. (See Motion, App. 31a-34a) Judge Reed granted the motion for recusal.

The trial date did not fit the schedule of the new trial judge (Bertelsman). In addition, the Petitioner was unable to comply with the Respondent's discovery requests because, having left Arizona State University to become a student at Louisiana State University, he was required to attend to his studies and to the new charges of handicap

and age discrimination he had made against LSU. (See Petitioner's Affidavit, App. 35a-36a)

The remainder of the proceedings below are summarized on pages 5 and 6 of Dunlap's Petition herein and need not be repeated.

Even though the proceedings below resulted in a dismissal of the claim by the district court followed by an affirmance of that decision by the Court of Appeals, said dismissal did not occur until after several years of litigation.

The Court has recognized the need for the quick termination of "insubstantial lawsuits" and that federal officials should not be "harassed by frivolous lawsuits." *Butz v. Economou*, 438 U.S. 487 at 507-8 (1978). The same considerations led the Court in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) to dispense with the subjective aspect of qualified immunity as previously announced in *Wood v. Strickland*, 420 U.S. 308 (1975). There can be little doubt that the instant lawsuit against a state university is insubstantial. (See the Petitioner's original Complaint herein, included as pp.37a through 42a of the Appendix)

II. IF, AS PETITIONER CONTENDS, CONGRESS NULLIFIED THE ATASCADERO DECISION FOR VIOLATIONS OCCURRING AFTER OCTOBER 21, 1986, THERE SEEMS LITTLE REASON FOR THE COURT TO OVERRULE A DECISION MADE IN JUNE OF 1985.

The issues discussed in *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985) and in its predecessor, *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984) (Pennhurst II) seemed especially divisive for the

Court. For instance, Justice Stevens, in his dissent in *Pennhurst II* says that:

“The majority’s decision in this case is especially unwise in that it overrules a long line of cases in order to reach a result that is at odds with the usual practices of this Court.”

Supra, at p. 159.

Justice Powell, writing for the *Pennhurst II* majority says, that:

“The contrary view of JUSTICE STEVENS’ dissent rests on fiction, is wrong on the law, and, most important, would emasculate the Eleventh Amendment.”

Supra, at p. 106.

Surely the Supreme Court’s limited time would be better spent on issues affecting the law for time spans in excess of sixteen months. (The time elapsed between the *Atascadero* decision and the amendments to the Rehabilitation Act, Public Law 99-506, codified as 42 U.S.C. 2000d-7.)

—O—

CONCLUSION

This Petition should be denied, leaving the Petitioner to pursue his state law tort claims against the Respondent in state court where such claims belong.

Respectfully submitted,

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EXCERPT I FROM THE DEPOSITION ON CLARKE
DUNLAP, TAKEN ON JANUARY 17, 1985, IN *DUNLAP*
V. UNIVERSITY OF KENTUCKY, EASTERN
DISTRICT OF KENTUCKY, NO. 82-24

(p. 8) A Yes, I was.

D18 And in what field?

A Physical Geography and Geomorphology.

D19 You did not complete the course of instruction,
then?

A At Arizona State, no, I didn't.

D20 What's the reason for that?

A I transferred to Louisiana State because Arizona
State University did not have any instructors who had
expertise in coastal geomorphology, and Louisian State,
that's one of their specialties.

D21 In coastal—

A Geomorphology, G-E-O-M-O-R-P-H-O-L-O-G-Y.

D22 Could you describe briefly what coastal morphol-
ogy (sic) is?

A Coastal Geomorphology is concerned with pro-
cesses and dynamic forces acting that give shape to coast-
lines; more specifically, marine influences including
water, waves, and currents, and fluvial influences as they
interfere with marine influences, that is to say, deposits
in particular.

D23 Have you completed your course work for the
Ph.D. degree?

App. 2

EXCERPT II FROM THE DEPOSITION OF CLARKE
DUNLAP, TAKEN ON JANUARY 17, 1985, IN *DUNLAP*
V. UNIVERSITY OF KENTUCKY, EASTERN
DISTRICT OF KENTUCKY, NO. 82-24

(p. 30) time I was released from the hospital and the time I left for Arizona, which is approximately August 23rd, 1980 until I left for Arizona in August, 1982. And there I received adequate examination and neurological treatment, actually, there's not any, quote, 'treatment', unquote, they can do for this disease, it's just a clinical followup, to see if you're getting any recovery, but there's nothing they can do for the disease to hasten or expedite recovery. You either get full recovery or you don't get it. I had a very, very severe case. I had absolute zero conduction on my nerves and my legs. So, they told me, I'd probably be crippled for the rest of my life, and I am.

D96 How many legal actions do you currently have pending, Mr. Dunlap?

A I have this suit, and I have a medical malpractice suit against the University of Kentucky Student Health Service. And I have a suit against some officials of the University of Kentucky, including yourself, pending, which is now before the United States Federal Court, pending a determination as to whether there is a cause of action for further prosecution of the case, which I intend to do. You're familiar, I'm sure, with that one. Because as a pro se case I say with complete details of my allegations in it.

App. 3

And the other two suits, I have in prosecution now are handled by my attorney, Mr. (p. 31) Philpot, the medical malpractice suit and the handicap discrimination suit. I have no other suits pending other than that.

D97 All right. What happened to you, didn't you have an action pending against the Salvation Army at one point?

A Yes, I did.

D98 What's happened to that action?

A I have it pro se, it was a suit for libel and defamation, and I handled it pro se, and as a congressman who made the libel and slander as well as the Salvation Army, it was dismissed on the grounds of Congressional Immunity. I appealed it to the Federal Court of Appeals in Cincinnati, Ohio, and I pursued it pro se, for two years, and is finally confirmed that the Congressional Immunity—and I had no recourse.

D99 So that suit is not—

A That suit is terminated.

D100 All right.

A I have three suits pending now, three of them against the University of Kentucky, for said reasons.

D101 All right. Do you have any other legal actions pending against anyone?

(p. 32) A No.

D102 Other than the legal actions which we have gone over, just gone over—

App. 4

A Yes.

D103 How many other actions have you filed since 1980?

A Well, I filed one against Rose-Marie Danda and her husband, Anthony, I believe was his first name, Danda, for negligent injuries caused by their negligence in an automobile collision, which I alleged was caused by their negligence in running through a red light at the intersection, and that suit is terminated without going to trial. The suit was filed by and through my counsel in Los Angeles, Langerman, Beegams, Lewis & Marks, and that suit was settled December the 17th, 1984.

D104 All right. So, it is no longer pending.

A That is correct.

D105 Have you filed any other legal actions?

A No, sir.

D106 What about prior to 1980, Mr. Dunlap, had you filed any legal proceedings? We've dealt with post 1980.

A In 1973 I was parked at a (p. 33) red light and two vehicles were speeding and negligently slid with the rear end of my VW 1972 Beetle, as a result of which I sustained severe injuries to my lower spine, namely, two disks (sic) were popped out by the impact. And for which I had a disk (sic) operation two years later after intensive therapy failed, I was hardly able to walk due to the excruciating pain. And a neurologist took out the two lumbar disks (sic) surgically in 1975, two years after the accident, after intensive therapy failed to alleviate the problem. And the operation was very successful. It's completely

restorative. And there was a negotiated settlement in April the 5, 1979 as a result of that accident.

D107 And where did that accident occur?

A It happened on the intersection of—excuse me, it was 855 North Vermont Avenue, in front of Los Angeles City College, where I'd just finished up my degree there. I was parked at the red light when the two vehicles collided, rear-ended my automobile. Knocked my car about 200 feet forward. (Witness indicating) Severe whiplash effect on the back.

D108 And in what court was that action?

A Los Angeles Superior Court. Judge Wapner negotiated the settlement. He's now a famous (p. 34) on television person, People's Court.

D109 Oh, really, is that the same fellow?

A I stood right before the man when he settled it, in his chambers. So I—

D110 I didn't know if he was a real judge or not.

A So, I met him in person. He was an active duty judge at that time. So, it's quite a kick to me to see him now on television. I feel sort of like I rubbed off—I become related to famous, infamous people. Ed Wilson was an infamous person, I knew in my past, and a famous person, you just seem to be my nature. My paths cross with these people for some reason or another. So, my body has sustained severe injuries and trauma since 1973, and I'm lucky to have lived through two severe automobile accidents and not have died from Guillain-Barre, which is there is a fatality rate of 5 percent. Well, that's another story.

App. 6

Oh, I went through a legal action for divorce, you might want to know about that.

D111 I think I was aware of that occurring in—

A I filed for divorce against my wife in 1970. I got the final decree in 1971, October, (p. 35) on the grounds of physical cruelty.

D112 And that occurred where?

A Los Angeles. That was by and through an attorney, not pro se.

D113 And that was with a different judge, I assume?

A Well, it was negotiated to a successful conclusion without having a trial.

D114 All right.

A And not before Judge Wapner, but just through attorneys through the negotiation where the attorneys on both sides, her attorney and my attorney.

D115 Prior to the accident in 1973, had you any sort of physical disabilities of any kind?

A I never did. I was always in good health, I was jogging five miles a night when I came to the University of Kentucky, as a matter of fact.

D116 At some of these institutions which you have attended, some of these educational institutions that you attended, were you exempted from the physical education requirements?

A Sure, I was a mature individual, over 40 years old, I'd gone through 13 months of combat in the Korean War, obviously.

App. 7

(p. 56) D117 So, they didn't feel you needed phys-ed., right?

A I don't think so, plus the fact that I was a weight-lifter and physical culturist, and jogged five miles with the exception of the time I was disabled from the rear-end accident, I put a quietus on that until I got my legs back for me that time.

D118 You were exempted from completing physical education at the University of Washington, were you not?

A Sure, I just got back from the Korean War, all Veterans were exempt as a matter of administrative fiat by that fact alone.

D119 But, it was not because of any physical defect.

A No, I was a physical culturist, I worked out in the weight gym four days a week for three hours, jogged three or four miles every night. Rode my 10-speed on 20 and 30 mile trips. I think you've got the picture.

D120 All right. So that your exemption was simply because all Veterans were exempt.

A All Veterans who had gone through boot camp.

D121 And so that there was no (p. 37) special dispensation as to you.

A Every Veteran received it.

D122 All right. Mr. Dunlap, have you ever been convicted of any crime?

A No, sir.

D123 Have you ever been charged with commission of any criminal offense?

App. 8

A No, sir.

D124 Have you ever been expelled or dismissed from any institution of higher education?

A No, sir.

D125 Have you ever been dismissed for academic failure from any institution of higher education?

A No, sir.

D126 All right, we've gone through the litigation, some of which occurred in various state courts and some of which is currently pending in Federal courts.

A Correct.

D127 Let's now move to administrative proceedings. Have you made any administrative complaints to any administrative agencies, and if so, which ones?

A Yes, I have.

(p. 38) D128 Would you tell us about those, please?

A I made a complaint to the U. S. Department of Education against Arizona State University for not giving me a Teaching Assistanceship when I was the best qualified and alleging discrimination against me on account of age and on account of handicap. And as a result of the Federal Mediator coming over after my complaint, Arizona State negotiated a settlement with me for the same appropriate amount I would have made as a Teaching Assistant when I was qualified for it during my last year there. The penalty would have been Arizona State would have been investigated, and 'Im sure they didn't want to be investigated, so that's why they in my opinion they negotiated the settlement, under pressure.

And then at Louisiana State University I felt I was the best qualified by reason of academic teaching experience and education and G.R.E. scores and so-forth to receive a Teaching Assistanceship there this Fall when I went there and I wasn't given it, so I filed another complaint against them alleging discrimination against a handicapped and an older American over 50 years old, as well as a complaint about deficiencies in parking which precluded me from having access to buildings because of their negligence in enforcing—in enacting and enforcing (p. 39) adequate parking, handicapped parking regulations. So, those are the two major issues which are being now negotiated by the U. S. Mediation Consiliation (sic) Service out of Washington, D.C. to the major issues, my allegation of lack of adequate parking regulations and enforcement thereof, plus denying my access to the buildings where I needed to get in in order to do my work. Number two, denying me of the Teaching Assistanceships enumeration which I desperately needed on account of economic need, for which I was the best qualified.

D129 Are those complaints currently pending before that agencies, sir?

A U. S. Department of Education was where I initiated the complaint, and as a matter of administrative routine they transferred to the U. S. Mediation Consiliation Service, and there's a 60-day deadline by which a satisfactory negotiation has to be made, satisfactory to both parties, and that 60 days expires the 21st of January, and before I left here Friday the Federal Mediator called me from Washington and asked me if I wanted to go through some administrative process at the University.

App. 10

I said, I've already gone through that route, I've made an administrative complaint to the academic vice-president and also the director of parking and they promised to rectify the parking situation and they didn't do it. I said, (p. 40) I've exhausted that administrative capability, I went to the U. S. Department of Education as the next step of escalation, they escalated it to your office, don't want to take a gigantic step backward, therefore, if you cannot negotiate this to my terms by January 21st, 1985, I request that a full-fledged investigation be made by the U. S. Department of Education, which is the next step of escalation. And of course if that fails the next step of escalation would be my filing a Federal civil suit. So, I will find out when I get back what the Federal Mediator is going to do, or what L.S.U. is going to do.

D130 Now, have you filed any other administrative complaints with any other agencies?

A No.

D131 What about your complaint to the Equal Employment Opportunity Commission with respect to the University of Kentucky?

A Yes, that was part of my escalation through the administrative steps of escalation for alleged discrimination of this institution, I did go to Nancy Ray, I believe was her name, here in this campus, alleging discrimination and employment on account of age and handicap, and she extended absolutely no help to me, after which time I went to the U. S. Department of Education, and the Statute of Limitations of 180 days unfortunately (p. 41) had expired by that time, so I was barred from aid from them because of that technicality, after which I had filed Fed-

eral suit, after which I had exhausted my administrative remedies.

D132 Did you in fact provide the EEOC with various materials, allegations, related to your complaint against the University of Kentucky?

A I probably did, I don't remember off the top of my head. Undoubtedly, I did. I filed administrative complaint also to my recollection with the Commonwealth of Kentucky, Department of Labor, Arbitration and Mediation Office, alleging discrimination in employment by the University of Kentucky as a teaching evening instructor and Teaching Assistanceship, as well, and I received no satisfaction from them, either. So, I exhausted administrative remedies, both on the university level, the state level, and the Federal level, after which I had turned to the U. S. Federal Courts for my due process.

HON. PHILPOT: Could I take three minutes and make a phonecall?

HON. DARSIE: Oh, yes.

REPORTER'S NOTE: Whereupon, a brief recess was taken at this time, and the proceedings recommenced and continued, as follows:

(p. 42) D133 Mr. Dunlap, I hand you this what appears to be a letter addressed to Art Gallagher, who's the Vice-President for Academic Affairs.

A Yes, I met him.

D134 I ask you if that letter to Art Gallagher was in fact sent by you to him?

A Yes, it was. And I also requested an FBI investigation of the same subject as well, alleging that the federal funds received, grants and aid for Teaching Assistanceships was being misused by the University and by the Department of Geography, specifically.

D135 All right. Do you recall that letter—I don't believe it is dated, do you recall approximately when you sent that letter to Art Gallagher?

A I can't recall the exact date, but—

D136 Well, approximate date.

A It must have been about 19—early 1982, approximately. I can't say for sure.

HON. DARSIE: I'm going to ask the Court-Reporter to make that as Exhibit "1.

REPORTER'S NOTE: Whereupon, *Defendant's Exhibit #1* in the Dunlap Deposition was marked for identification at this time.

(p. 43) A And I believe there was an FBI investigation as a result of my complaint on the same subject to them, but the results of the investigation was they said that there was such a con-mingling (sic) of funds they can't ascertain whether in fact any embezzlement had been done or not. Or, the misuse of the funds as well as possible embezzlement of the funds, because I contended that I should have been getting the Teaching Assistanceships and I wasn't and I suspected that there might have been misuse of the funds, that is, discriminatory fashion and/or embezzlement of the funds, because they seemed to be going someplace, not to people who were meritoriously

entitled to them. So, I felt that was a Federal questioning of which the FBI had jurisdiction to investigate, so I did lodge a complaint. And also wrote a letter to the President of the University, Singletary, on the same subject, at about the same time.

D137 You state in the letter, which is appended as Exhibit 1 to your deposition, that "I allege that there are criminal violations there."

A That's right, that's what I alleged.

D138 What basis did you have for that allegation?

A Because of the fact that the (p. 44) funds from which Teaching Assistanceships were paid, either by Federal monies or state monies, probably Federal monies, were being misappropriated and misused and given to people who were not on the basis of competition and merit as well as affirmative action entitled to them. And so I believed that the funds were number one, probably being misused and misappropriated, which is contrary to Federal law, perhaps even being converted to somebody's illegal use, and I thought that there was probably cause that an investigation should be made.

D139 Now, what evidence did you have that they were—

A Misused?

D140 —that any funds were being misused or converted to personal use?

A The fact that I was entitled by merit to receive the Teaching Assistanceship over others I alleged had inferior qualifications and also were not handicapped, and

in fact I did not get the Teaching Assistanceship, and the Teaching Assistanceships I alleged and still allege are partially at least supported by Federal funds, thereby making it a Federal question.

D141 So, in essence, what you're saying is that because you weren't getting the money you assumed it was being misappropriated, is that correct?

(p. 45) A That's at least substantially correct.

D142 All right.

A I think that would be a fair inference that there was wrongdoing and misappropriation of Federal funds somewhere in the Department.

D143 Did you have any other evidence of relating to misappropriation of funds other than which you've stated?

A This is why I requested an FBI investigation, so that they could collect the necessary evidence to return a Federal indictment in the case in case there were any misuse or conversion of Federal funds.

D144 Did the FBI contact you in connection with this investigation?

A Yes.

D145 Were you able to give them any information other than what you've told us here?

A This is my best inference that I could draw, I had no documentation, that's why I requested an investigation, so the documentation could be uncovered, and only the FBI would have the power to investigate that through

the Department of Justice, because if it were found to be true it's a Federal question.

D146 Did you have any idea about (p. 46) who was misappropriating the funds?

A The Chairman of the Department, Karl Raitz, and/or Chairman—what's his name, Brunn.

D147 Did you have any evidence that either one of those individuals was in fact misappropriating funds?

A Well, the fair inference would be that they are responsible for awarding the Teaching Assistanceships and if they were misappropriating the money, any wrongdoing would be attributable to them. I think this is a fair inference to draw on probable cause for an investigation.

D148 Now, with respect to your academic career at the University of Kentucky, specifically—

A Yes, I hate to recall it, but if I have to bring back unpleasant memories, I have to do so, I assume.

D149 All right.

A Very unpleasant memories.

D150 Is it your belief that you were able to complete the work for the Ph.D. because of factors other than lack of academic performance?

A Yes, of course. I state categorically that there was no, quote, "lack of academic performance", unquote.

(p. 47) D151 All right.

A I categorically deny this.

D152 All right. What do you believe resulted in your inability to complete the work for the Ph.D. here?

A You're asking me a leading question, sir, you're asking me stating that I was unable to complete the program, when in fact I was able to complete it, had it not been for the discrimination that was allegedly practiced against me here. You're asking me a leading question.

D153 Well, the form of the question doesn't bother me. But what I'm asking for is your opinion as to what factors prevented, let's put it that way.

A Me from completing the program?

D154 Prevented you from completing your academic program here.

A Alleged discrimination on account of handicap, primarily, and I'm sure there were subtle age factors in discrimination operated against me, because I was 50 years old when I embarked on the program, as well.

D155 Well, then, let's explore that. In other words, you believe that they—who do you (p. 48) think discriminated against you?

A Chairman—

D156 Who specifically?

A Former Chairman Raitz, the Incumbant (sic) Chairman, Brunn, and former Director of Graduate Studies, Leinbach, and I believe that there are a couple of three other individuals who were complicit about which we will have to gather more information through discovery before making allegations against those persons.

D157 Now, you believe that Brunn, Leinbach and Raitz—

A Definitely.

D158 All right, discriminated against you.

A Definitely.

D159 Because you were handicapped.

A Yes, sir.

D160 Okay.

A Precisely.

D161 Did they discriminate against you on any other basis, other than handicap? I believe you mentioned the possibility of age?

MR. DUNLAP: Tim?

HON. PHILPOT: It's okay, go ahead and answer the question.

(p. 49) A Yes, I alleged age discrimination as well, and while we're on the same subject, I believe that there was operated against me a handicapped Veterans discrimination, as well. Three categories I can make specific allegations about, primarily, discrimination on the account of handicap, discrimination on account of being an older American over 50 years old, on account of age. Number three, being a handicapped Veteran, although the handicap was not service-connected, nevertheless, handicap Veterans are also protected under the law. Which is an allegation that I made at Arizona State University in my administrative complaint against them.

D162 All right, now, let's take them one at a time.

A Yes, sir.

D163 Why do you believe Professor Leinbach does not like handicapped people?

A You're asking a leading question, again, sir.

D164 I'm asking for your opinion.

A You're stating in effect that I assume that Professor Leinbach does not like handicapped people. I don't know whether he likes or dislikes handicapped people. You will have to be more specific in your question, sir.

(p. 50) D165 Well, you've said that he discriminated against you on the basis of handicap.

A Yes, sir.

D166 All right. I'm asking you if you have any evidence as to why he would do that.

A His motivations, I can only conjecture as to the motivations for his so doing. I have some very strong opinions in that direction.

D167 Well, what are those opinions?

HON. PHILPOT: It's okay, sure.

A All right. For one thing, Professor Leinbach as well as Professor Brunn, I alleged to be very leftwing political orientation as to their political ideology and thinking. I alleged them to be rigidly ideologues, as far as political ideologies is concerned. I alleged that they're bigoted and intolerant of opposing views, somebody who is a more conservative orientation such as myself. And they exercise this bias in grading, which I alleged specifically against Professor Brunn, and more subtly by Professor Leinbach, and there is definitely been shown in a

profession of geography to be a dichotomy between those who practice so-called cultural or human geography and those who practice physical geography, and that generally speaking, of course, there are exceptions, (p. 51) cultural human geographers are generally speaking idealogues, politically on the political spectrum towards the left side of the spectrum, while physical geographers are more inclined to be more conservative. Of course, naturally, there are exceptions, this is generalizations.

D168 But Mr. Dunlap, what does that have to do with handicap discrimination?

A It has alot to do with it, sir.

D169 Well, connect that up for me, I don't understand that.

A All right, I'll do that, I'll be very glad to do so, sir. These people who profess leftwing ideologies are selective advocates, I allege, of women's rights, rights of racial minorities, and rights of religious and ethnic minorities, but, on the other hand, their selective advocacy does not extend to the handicapped minority or to age minorities. In other words, they're selected advocates, whatever suits their political ideology. That way, I relate their political orientation toward their selective advocacies, protection of certain minorities, but not of other minorities.

MR. DUNLAP: Can we go off the record so my attorney can hear this, please? I want (p. 52) him to hear this.

REPORTER'S NOTE: Whereupon, beginning with question (D167) on Page 50, and continuing was read back by the Reporter at this time.

D170 That answer related to I believe primarily to Mr. Leinbach, or at least that's where we started.

A No, sir, it is also relates to Professor Brunn, was overtly active, I allege, in doing this, being a selective advocate, while discriminating against other minorities and not acting as an advocate for them. While Professor Leinbach I allege has done the same thing in more subtle activities concerned with selecting me out, so to speak. I was selected out of the program, in effect. In other words, to put it in plain English, coerced and duressed out of it by subtle pressures to which I was extremely susceptible to being a very weak individual and almost completely helpless just out of the hospital, and which these people realized I would be susceptible and vulnerable to—and which bias I allege that they implemented into action in order to force me out of the program. And I allege that Professor Leinbach was one of the foremost advocates of selection out of myself out of the program. In other words, he's a selective advocate. Had I been a woman, had I been a racial minority, (p. 53) had I been an ethnic or a religious minority, overt aid and assistance would have been extended to me, but his ideology did not encompass the idea of a white, Anglosaxon Protestant 10th, generation conservative American who was a member also after 1979 of the so-called handicapped minority. I think selective advocacy is the major theme here.

Yes, this is my resignation letter.

HON. DARSIE: Okay. Let the record reflect that I have shown the witness a letter dated 4-February, '81, which I'll ask to be marked as Exhibit #2.

REPORTER'S NOTE: Whereupon, *Defendant Exhibit #2* in the Dunlap Deposition was marked for identification at this time.

D171 And it is your testimony, I take it, Mr. Dunlap, that you in fact wrote this letter and that this is your signature which appears thereon on Exhibit 2.

A Yes, that's the objective analysis.

D172 Okay.

A There is an underlying factors (p. 54) which need to be brought out in relation to that letter, I believe.

MR. DUNLAP: You can do that in your cross examination.

D173 In that letter you state, you begin that letter by saying, "Please be advised that I am dropping out of the Ph.D. program effective immediately." You then go on to say, "There is so much strain and pressure connected with the program, as well as the terrific pressure I am now undergoing as a cripple with a major handicap that I can no-longer cope with it."

A That is true and correct, I could no-longer cope with the pressure and duress they were exercising against me.

D174 Okay. "I tried my best to overcome the major handicap but could not cope with it all."

A I could not cope with the duress.

D175 Well, now, this relates to the handicap, I mean, what you say here is I did my best to overcome the major handicap but could not cope with it all.

A With all, meaning the program as well.

D176 Okay.

(p. 55) A There's a double-pronged thrust in that paragraph.

D177 Okay. "This is the reason for my dropping out." Now, are you saying now that these were not the reasons for your dropping out?

A Those are the reasons, but there's also a reason which you don't know about, and which I'd be glad to elaborate upon—

D178 Okay.

A —at length at that point.

D179 Yes.

A Unbeknownst to you I consulted the same counsel who handled my preliminary suit for medical malpractice against the University, namely, William L. Legg of Lexington. I told him about the duress and coercion being exercised against me by Professor Brunn, Professor Leinbach and other unnamed and unascertained individuals in the Geography Department, asking what I should do about it. He said, "Well, sir, I had the same problem with my wife, Mrs. Legg, who was a top student in Psychology, and she was selected out of the Psychology Program, which we alleged on account of her sex as being a woman. Therefore, I threatened to bring suit," I believe he said, "if they didn't consider an admission on her merits, disregarding her sex. At which point they backed down and (p. 56) accepted her into the Psychology Department. Therefore, I recommend to you, Mr. Dunlap, that in order to have a

valid discrimination complaint you should first resign from the program and then apply for readmission again. And you would have a better chance to state your case, therefore, if you were being rejected on initial application rather than coercion and duress, which you allege to me." So, upon the advise of Mr. Legg, who was my attorney at that point, I did point out the alleged coercion and duress to which I was extremely psychologically vulnerable to. I couldn't withstand the pressure, and I was withdrawing. That was just a ploy saying I was applying for a job with the T.B.A., to throw them off guard, to make them believe that their coercive and alleged duressive efforts had succeeded, and I would be no-longer in their hair and I would be gotten rid of. Therefore, in accordance with the plan with Attorney Leg (sic) I filed for readmission with the University about a month later, knowing full well that I would be rejected, which would according to him give me a better chance to prove discrimination because of the subtle ways that I'd been selected out or forced out of the program, would be more difficult to prove. So, upon his advice that's what I did, and sure enough, when I reapplied for readmission to the Graduate School, which has to first be approved by the Department of Geography, obviously, (p. 57) obviously the Geography Department arbitrarily and capriciously for no reason at all without giving a reason said, you cannot be admitted to the program, therefore, you cannot be readmitted to Graduate School. Upon this basis, then, I filed a formal administrative complaint, I believe it was, to the U.S. Department of Education. However, I was barred from that remedy by the fact that 180-day statute had run. Then I escalated up to the ladder of escalation to a Federal suit on February 22nd, 1982.

But I became disenchanted with Mr. William Legg in the interim because he promised me that he'd vigorously prosecute my case on a contingency fee basis for by medical malpractice suit against the University of Kentucky Student Health Service, and in fact for 17, 18 months he did absolutely nothing. Despite my constant inquiries to him whether he was going to vigorously prosecute my case, if not, I'm going to drop you as my attorney, and in fact, which I did. After he was ostensibly going to help me on the readmission discrimination, thereby leaving me with a whole ball to carry myself, pro se, thereafter.

D180 So, it's your testimony that—

A Yes, sir.

D181 That this letter, Exhibit 2, which would appear to be a letter of resignation or a letter of withdrawal—

(p. 58) A Yes, sir.

D182 Was in fact a stratagem which you were advised to employ by this attorney, Mr. Legg.

A Yes, sir.

D183 Is that correct?

A On advice of counsel, it was by counsel at that time.

D184 Okay. Will you—

A He says, "I recognize the fact that you have probably been discriminated against, the same thing happened to my wife. However, in order to—rejection of admission were accepted for admission before, and rejection for readmission arbitrarily and capriciously with no stated ra-

tional or cause for doing so would give you a better entree for your alleged discrimination. Which may be more subtle and more difficult to prove." So, upon his advice, this is what I did.

D185 Do you have any objection to our taking Mr. Legg's deposition—

A Please do.

D186 And asking him if that's correct?

A Please do.

D187 Would you waive the attorney/client privilege so that we may inquire of Mr. Legg

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

CIVIL ACTION NO. 82-24

CLARKE DUNLAP

PLAINTIFF

VS.

UNIVERSITY OF KENTUCKY

DEFENDANT

MOTION

* * * * *

(Received August 23, 1985)

Comes the Plaintiff, by and through counsel, and moves the Honorable Scott Reed, to remove himself as the trial judge in the above styled action for the reasons enumerated in the Affidavit attached hereto of the Plaintiff, Clarke Dunlap. Counsel for Plaintiff herewith states that he has no personal knowledge of the two prior pro se suits filed by the Plaintiff, (Civil Action No. 82-184 and Civil Action No. 84-52, both in the Eastern District of Kentucky at Lexington), and the undersigned counsel has no reason personally to believe that the Honorable Scott Reed would be anything but fair in the trial of said matter, but nevertheless, the undersigned counsel has spoken at length with the Plaintiff about his Affidavit attached hereto, and said Plaintiff is sincere in his belief that justice requires another Judge to sit in the trial of this matter.

Therefore, Plaintiff moves that the Honorable Scott Reed withdraw as Judge of this case, and further moves that another Judge be appointed.

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In the event that the above Motion is sutsained, Plaintiff further moves the court for continuance of the trial presently scheduled for October 7, 1985, at 9:30 a.m.

NOTICE

The above Motion will be heard at the earliest convenience of the Court.

ANGGELIS & PHILPOT

BY:
139 Market Street
Lexington, KY 40507
Telephone: 255-7761

This is to certify that a true copy of the foregoing Motion has been served by mailing same to Hon. John Darsie, University of Kentucky, Room 2, Administration Building, Lexington, Kentucky 40506, this — day of August, 1985.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON, KENTUCKY

* * * * *

CLARKE DUNLAP

PLAINTIFF

-VS-

CIVIL ACTION NO. 82-24

UNIVERSITY OF KENTUCKY

DEFENDANT

AFFIDAVIT IN SUPPORT OF CHALLENGE
FOR CAUSE

I, CLARKE DUNLAP, do hereby swear or affirm
that the following statements are true:

- 1) The above styled suit is set for trial on Monday,
October 7, 1985 at 9:00 AM;
- 2) The Honorable Justice Scott Reed will preside
over the styled case;
- 3) The aforementioned Justice has dismissed two
prior pro se suits of the Plaintiff, Civil Actions
-Nos. 82-184 and 84-52;
- 4) It is alleged by the Plaintiff that the afore-
mentioned Justice dismissed the aforementioned
cases in an arbitrary and capricious manner thus
denying Plaintiff a chance to have his due process
of law by having access to a forum for redress of
allegedly valid grievances, Case No. 84-52 having
also named the above styled defendants as a prin-
cipal defendant;
- 5) Also, it is alleged that, because of alleged prior
arbitrary and capricious conduct in summary dis-

missal of Plaintiff's allegedly valid pro se aforementioned suits, as well as a manifested bias and prejudice towards the defendant in suit no. 84-52, Plaintiff is allegedly vested with a right to challenge the said Justice Scott Reed for consideration for removal on account of alleged lack of impartiality and the requisite (sic) objectivity to decide the instant case fairly;

- 6) WHEREFORE, Plaintiff prays that the Honorable Court remove case no. 84-52 from the jurisdiction of the said Justice Scott Reed and replace him with another Justice to hear the case;
- 7) It is specifically requested by Plaintiff, should the removal and replacement of Justice Scott Reed be sanctioned by the Honorable Court, that the replacement Justice certify that he has not read the aforementioned case nos. 82-184 and 84-52, in order that he will not be influenced by the dismissals of these suits, by Justice Scott Reed;
- 8) Plaintiff is going to file a "Notice of Appeal" on aforementioned suit no. 84-52 and, therefore, it is also specifically requested that the requested replacement Justice be directed not to read the prospective appellate record of said case, in order to preclude impartiality in his decision of the instant case.

RESPECTFULLY SUBMITTED

/s/ Clarke Dunlap
1150 Aster St., 82
Baton Rouge, Louisiana 71802
TEL.: (504) 387-4977

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SWORN AND SUBSCRIBED TO BEFORE ME THIS
16th DAY OF AUGUST, 1985.

MY COMMISSION EXPIRES ON
Beverly Q. Lewis,
E. Baton Rouge Parish, LA.
My Commission if for Life
/s/ Beverly Q. Lewis
NOTARY PUBLIC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

* * * * *

CLARKE DUNLAP

PLAINTIFF

-VS-

CIVIL ACTION NO. 82-24

UNIVERSITY OF KENTUCKY; STANLEY D. BRUNN
ET AL

AFFIDAVIT IN SUPPORT OF MOTION FOR
EXTENSION OF TIME FOR PRODUCTION OF
DOCUMENTS & ANSWERING INTERROGATORIES

Comes now the Plaintiff, CLARKE DUNLAP, who
hereby swears or affirms that the following statements
are true:

1. Plaintiff is a full time Ph.D. student in geoscience
at LOUISIANA STATE UNIVERSITY;
2. Plaintiff is severely disabled and therefore is very
limited in his ability to get around to attend to
his very demanding studies in science;
3. The requests of the Defendants for production
of documents is too voluminous and time con-

suming and tedious in order to comply with same during the Fall, 1985 semester;

4. The tedious work necessary, at this time, would jepordize (sic) the Plaintiff's vocational rehabilitation studies and adversely affect the quality of Plaintiff's grades and survival in the program;
5. THEREFORE, Plaintiff requests the Honorable Court to extend the time compliance limitation from "reasonable" and/or 30 days to January 10th, 1986, at which time Plaintiff will be free from his rigorous studies from December 15, 1985 to January 15, 1986 thus to have enough time to turn his full time and attention to compliance.
6. That the Plaintiff has administrative complaints against LOUISIANA STATE UNIVERSITY, alleging discrimination on account of age and handicap, as well as failure to extend affirmative action, in awarding graduate assistanceships, with the following federal agencies:
 - a) U.S. DEPARTMENT OF LABOR
OFCC OFFICE
500 CAMP ST., RM. 1020
NEW ORLEANS, LA. 70130
CHARGE OR CASE NO. F-85-0090
ATTN: KEN HUGHES
 - b) U.S. EQUAL OPPORTUNITY OFFICE
600 SOUTH ST., RM. 528
NEW ORLEANS, LA. 70150
CASE NO. 062851729
ATTN: MS. JACQUELYN BOOTH

c) U.S. DEPARTMENT OF EDUCATION
OFFICE OF CIVIL RIGHTS
1200 MAIN TOWER BLDG.
DALLAS, TX. 75202
ATTN: Ms. or Mr. (?) MAXEY MARSHALL
CASE NO. 06852062

7. That Mr. Randy Lopez, Affirmative Action, EEOC, Representative at LOUISIANA STATE UNIVERSITY, has been advised by myself of my suits versus the University of Kentucky on account of medical malpractice and/or discrimination on account of handicap and age in programs at UNIVERSITY OF KENTUCKY; and that I have furnished to him all relevant documentation;
8. That I have advised the above cited, in "6", federal agencies of my legal actions versus UNIVERSITY OF KENTUCKY and have furnished them full documentation on same.

/s/ Clarke Dunlap

MY COMMISSION EXPIRES ON

.....
SWORN AND SUSCRIBED TO BEFORE ME THIS
31st DAY OF OCT., 1985

Sworn to and subscribed before me this 31 day of Oct. 1985

/s/ S. B. Knight
Notary Public
East Baton Rouge Parish, Louisiana
My Commission is for Life

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

CLARKE DUNLAP

PLAINTIFF

VS.

COMPLAINT NO. 82-24

UNIVERSITY OF KENTUCKY
DEPARTMENT OF GEOGRAPHY

DEFENDANT

(Filed February 22, 1982)

Plaintiff, Clarke Dunlap, for his cause of action, states the following:

1. The Plaintiff is a resident of Lexington, Fayette County, Kentucky.

2. The Defendant Department of Geography is an organizational and functional academic agency of the University of Kentucky. Members of the Department are: Stanley D. Brunn, Thomas P. Fields, P. P. Karan, Karl B. Raitz, Thomas R. Leinbach, William W. Withington, Wilford A. Bladen, Gary Shannon, Robert G. Cromley and Justin C. Freiberg.

3. Defendant administrative officers of Defendant University include: Otis A. Singletary, President, Art Gallagher and Robert Zumwinkle, Vice Presidents of Academic Affairs, Wimberly C. Royster, Dean of the Graduate School and Professor Jean G. Pival, Academic Ombudsman.

4. Also named as Defendants are John Does I through XX and Jane Does, I through XX, their true identities to be ascertained later through the discovery process.

5. Plaintiff commenced the Ph.D. program in Geography at the Defendant University during the Fall semester, 1979. Plaintiff had just completed the Fall semester, 1979 when he was stricken by a severe Quadriparetic-paralytic neurological disorder, caused by the negligence of the Defendant Universities' Albert B. Chandler Medical Center, Student Health Service in administering an influenza inoculation to the Plaintiff. As a result, Plaintiff was hospitalized from December 18, 1979 until August 23, 1980.

6. Upon release from the hospital, Plaintiff commenced the Fall semester, 1980; carrying a full load of graduate courses as well as teaching one night class per week. Despite having to cope with a severe disability-handicap alone, Plaintiff was able to make a "B" average as well as receiving an "outstanding" rating for his teaching classes from a wheel chair.

7. Plaintiff reentered the University under the auspices of the State of Kentucky, Department of Education, Bureau of Rehabilitation, Mr. Wm. Augustyn, Counselor as well as the Handicapped Student's Adviser, Mr. Jacob Karnes. Implicit in this arrangement was that the Defendant Department of Geography should furnish the Plaintiff all possible guidance and direction in his graduate rehabilitation program studies. As a matter of fact, the Defendant Department was totally negligent and remiss in that respect.

8. At numerous times during the period between September 1, 1980 and February 27, 1981, the exact number of times and the date to be ascertained through discovery, the new Chairman of the Department of Geography, Stan-

ley D. Brunn, convened extra-judicial secret committee meetings, the purpose of which was to discuss the effect of Plaintiff's handicap upon the Department as well as ways and means to force Plaintiff out of the program. At these meetings it is alleged that Chairman Brunn and the Department members reached a decision to force Plaintiff out of the Program. It is alleged that the committee members first discussed quasi-legal means but later illegal means of accomplishing this goal. The members alleged decided that blatantly overt illegal means would result in possible prosecution so concerted duressive means were decided on. In addition to discussing illegal and duressive means to force Plaintiff out of the Program, Defendant faculty members discussed the impact of Plaintiff's handicap upon the other graduate students, as well as Plaintiff's possibilities of recovery. In the event that Plaintiff would not recover, it was pointed out that Plaintiff could not, in their opinion, function at all as a graduate student and even less so as a professor. In this regard, one Professor present pointed out that Plaintiff "presence in his seminars created a stress situation for the other students", also that, in his (medical?) opinion Plaintiff would not recover and therefore it would be better to "Get rid of plaintiff."

9. On February 27, 1981, Plaintiff received an intimidating, threatening and coercive letter from Director of Graduate Studies Thomas R. Leinbach. The letter, alleged to be the culmination of the formulated policy of removal by duress, falsely accused the Plaintiff of having sub-standard graduate school grades as well as other nebulous and unsubstantiated allegations. The letter concluded with the statement that the Defendant Department would

dismiss Plaintiff from the Program, if Plaintiff did not "rectify" the alleged "deficiencies".

10. As a result of Defendant Department's attempt to apply alleged illegal duress on Plaintiff, to force him out of the Program because of alleged discriminatory policies against the handicapped, Plaintiff suffered great anxiety, depression and loss of self esteem among his peer group as well as the general public.

11. Because of his severe disability and handicap, Plaintiff was and is highly vulnerable to intimidation, duress and coercion. Owing, particularly, to Plaintiff's hyper-sensitive psychological susceptibility, caused by negligence of Defendant University negligence in causing the handicap, Plaintiff was unable to withstand the concerted intimidation of the Departmental faculty members and resigned from the program sometime between February 27, and March 13, 1981.

12. After Plaintiff resigned from the program, Plaintiff leaned (sic) of the discrimination that had been illegally practiced against him by the secret faculty committee actions. Because of this, Plaintiff applied for reentry into the Department on March 13 and for readmission into the Graduate School on March 30, 1981. As readmission into the Graduate School is contingent upon acceptance into the Department of Geography, it came as no surprise to the Plaintiff that he was refused readmittance to both on May 22, 1981. The letter of refusal for readmittance-reentry came from Director of Graduate Studies Thomas R. Leinbach. His reason was: "marginal performance".

13. It is alleged that the Defendants, and Defendant Department of Geography, conspiratorially, recklessly,

willfully, and with malevolent intent, acting under State law, regulations, customs, and usages, convened secret extra-judicial committees for the purpose of subjecting Plaintiff to deprivation of his privileges and immunities under the Constitution of the United States. More particularly, it is alleged that Defendants deprived Plaintiff of his right to be treated equally under the law, but rather discriminated against him on account of his handicap, as well as depriving Plaintiff of his chance to appear before his accusers in the secret extra-judicial committee so as to deprive Plaintiff further of his procedural and substantive due process of law and rights in arbitrarily coercing Plaintiff from the Program as well as discriminating against him, in his readmission application, merely because Plaintiff was a handicapped minority.

14. It is alleged that the Defendant Department of Geography has a long past record of discrimination against racial and other minorities. Based upon the past discriminatory conduct of the Department against the "traditional" minorities, it would seem that it would be very easy to predict their possible behavior exhibiting the same discriminatory actions against newly emerging minorities; i. e. the handicapped minorities that are only now beginning to assert themselves in their determined quest for their equality and civil rights. Indeed, Defendant's line of conduct, as described in paragraphs "7" through "12", supra, evidences the blatant discrimination that has been practiced against the Plaintiff whereby the discriminatory conduct judges Plaintiff *solely* upon his handicap rather than the merit of Plaintiff's performance. Thus the Defendant's conduct cannot be countenanced for so long as there is an umbrella of Federal protection that can be extended to

Plaintiff in the form of the due process and equal protection clauses of the 14th Amendment and for so long as there are federal courts to enforce the Constitution of these United States.

15. As a result of the discrimination practiced by the Defendant upon Plaintiff, arbitrarily and capriciously in total disregard of law, the Plaintiff has lost an opportunity to earn the earnings of a Ph.D. for the past three years at \$20,000.00 per year for a total of \$60,000.00 as well as future potential earnings in the same amount for twenty years for a total of \$400,000.00. Moreover, Plaintiff has suffered great humiliation vis-a-vis his graduate school departmental peer group as well as extreme anxiety, depression as well as possible deleterious effects upon Plaintiffs already delicate health. Defendant's reckless, willful, and conspiratorial behavior, coupled with a malevolent intent to harm Plaintiff intentionally, strong (sic) suggest that punitive or exemplary damages be inflicted upon Defendants, each and all of them, in order to act as a deterrent to preclude them, as well as other universities, from so acting prejudicially and discriminatorily against other "newest minority" handicapped persons. Finally, Plaintiff prays to the Court to allow equitable, conscionable and legal relief to be extended to the Plaintiff in the form of a court order, directed the Defendants, each and all of them, to reenter Plaintiff in the Department of Geography and to be readmitted into the Graduate School at the University of Kentucky, Department of Geography.

WHEREFORE, Plaintiff demands judgment against the Defendants in the amount of \$1,000,000.00 with the costs and disbursements of the action.

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/s/ Clarke Dunlap
In Pro Se
2553 Larkin Road, No. 25
Lexington, Kentucky 40503
Tel. (606) 276-1294

A True Copy Attest
Davis T. McGarvey, Clerk
U.S. District Court

By: /s/ Nancy C. Anderson
